

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 4:09CR3066
)	
Plaintiff,)	
)	
vs.)	AMENDED
)	TENTATIVE FINDINGS
LUIS HUMBERTO AVENDANO,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") in this case and the Defendant's objections to the PSR (Filing No. 28). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement includes the parties' recommendation under Federal Rule of Criminal Procedure 11(c)(1)(B) that the Defendant be held responsible for at least 50 but less than 200 grams of a methamphetamine mixture, resulting in the application of base offense level 26. The PSR states that the Defendant is responsible for 45.32 grams actual methamphetamine, resulting in base offense level 30. Absent unusual circumstances, the plea agreement will be upheld and the base offense level is 26.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the Defendant's objections (Filing No. 28) to the PSR are granted;
2. The parties are notified that my tentative findings are that the PSR is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

Dated this 28th day of October, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Court